

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

YVONNE FORTKAMP,

Plaintiff,

:

Case No. 3:14-cv-458

- vs -

District Judge Walter Herbert Rice

Magistrate Judge Michael R. Merz

ABN AMRO MORTGAGE GROUP, et al.,

Defendants.

:

REPORT AND RECOMMENDATIONS

This case is before the Court on Plaintiff's Motion for Ruling on the Pleadings (Doc. No. 18). Plaintiff notes that instead of filing an answer to her Complaint, Defendants filed a motion to dismiss the Complaint. She complains that the motion "is in avoidance of an answer" and Fed. R. Civ. P. 12 requires an answer in twenty-one days after service (Motion, Doc. No. 18, PageID 121).

The motion to which Plaintiff refers is Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Doc. No. 12). That motion was made under Fed. R. Civ. P. 12(b)(6) and raised the affirmative defense of *res judicata* as well as generally arguing that Plaintiff has not pled sufficient facts to sustain a claim for relief.

Plaintiff is mistaken in her interpretation of Fed. R. Civ. P. 12. The Rule does require an answer, but also permits a defendant to raise a number of defenses by motion before it files an

answer. Fed. R. Civ. P. 12(a)(4) expressly says that a defendant's time to file an answer is extended until fourteen days after the court decides a motion under Rule 12(b). Furthermore, Fed. R. Civ. P. 12(c) permits a motion for judgment on the pleadings only after the pleadings are "closed," meaning after the answer is filed.

Plaintiff's Motion for Judgment on the Pleadings is untimely and should be denied without prejudice to its renewal after the pleadings are closed. Plaintiff is also notified that her Motion does not constitute a sufficient response to the Motion To Dismiss. Her response was due to be filed not later than March 2, 2015, and is now untimely.

March 3, 2015.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).